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SUPREME COURT, U.S.

No. 79-2006

IN THE

Supreme Court of the United States

October Term, 1979

LLOYD BARRENTINE, CLYDE G. EDWARDS, CLEO KEENEY, MAXIE BLANTON, JOHNNY ROBINSON, CHARLEY DEATON, H.E. MITTCHELL, AND L.R. YOUNG,
Petitioners,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC., INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND WAREHOUSEMEN, LOCAL 878, AND A.J. PICKERING, PRESIDENT,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

PETITION FOR WRIT OF CERTIORARI FILED JUNE 19, 1980
CERTIORARI GRANTED OCTOBER 6, 1980

IN THE

Supreme Court of the United States

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

LLOYD BARRENTINE, CLYDE G. EDWARDS, CLEO KEENEY, MAXIE BLANTON, JOHNNY ROBINSON, J.N. SCATES, CHARLEY DEATON, H.E. MITTCHELL, and L.R. YOUNG,

Plaintiffs,

vs.

CIVIL CASE
77-C-85

ARKANSAS-BEST FREIGHT SYSTEMS, INC. and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA, CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL UNION NO. 878, A.J. PICKERING, President,

Defendants.

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IN THE
United States District Court
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

[Caption omitted in printing]

[Filed March 23, 1977]

COMPLAINT

Plaintiffs for cause of action state:

1. Plaintiffs first filed this cause of action June 28, 1973 in this court Civil Case Number LR-73-C-159 which case was dismissed without prejudice March 23, 1976. Complaint in said case was as follows:

COMPLAINT

COUNT ONE:

1. The above named plaintiffs, employees of defendant, Arkansas-Best Freight Systems, Inc. (hereinafter referred to as "ABF"), and are members of International Brotherhood of Teamsters, Chauffers, Warehousemen, and Helpers of America, Local 878 (hereinafter referred to as "Local 878"), bring this action in behalf of themselves and other employees of ABF and members of Local 878 who are similarly situated, to recover unpaid minimum wages, liquidated damages, costs and attorney fees under provisions of 29 USC 216(c).

2. Jurisdiction of this action is conferred on this court by said 29 USC 216(b) and by the provisions of 28 USC 1337, relating to "any civil action or proceeding arising under any Act of Congress regulating commerce."

3. Defendant ABF is a corporation organized under the laws of the State of Arkansas, with its principal place of business in Fort Smith, Arkansas, and it also operates a large freight terminal in Pulaski County, Arkansas, within the territorial jurisdiction of this court, and, at all times hereinafter mentioned, employed plaintiffs and others similarly situated.

4. At all times hereinafter mentioned, defendant ABF was engaged in the business of hauling freight by vehicles across State lines throughout the United States. During the period April 1, 1970 to the present date, or during portions of such period, ABF employed plaintiffs and others similarly situated, as operators of their vehicles engaged in interstate commerce. In performance of their employment they fall within the meaning of 29 USC 203(b), 203(i), 203(j) and 206(a).

5. Plaintiffs are residents of Pulaski County, Arkansas, and reside within the territorial jurisdiction of the Eastern District of Arkansas.

6. Local 878 is bargaining agent for plaintiff and others similarly situated, under a collective bargaining agreement between the Union and ABF for the period April 1, 1970 through June 30, 1973, and as such owed to them the duty of fair representation in pressing any grievance plaintiffs' might have against ABF.

7. In the course of plaintiffs' employment with ABF they are notified of the time to report for work and to register in at the Little Rock truck terminal. Upon arrival, plaintiffs first "punch in" on a time clock. Then, in accordance with § 292.7 Department of Transportation Safety Regulations, plaintiffs' must inspect the vehicle to which they are assigned to determine parts and/or accessories are in good working order. If satisfied of the good working

order of said vehicle, plaintiffs are then to proceed on their assigned trip, and are paid by defendant ABF from the time originally "punched in". If, however, plaintiffs should determine defects exist in the working parts or accessories, they then must transport the vehicle to ABF's repair garage for the needed corrections. Upon arrival at the repair garage, plaintiffs are again required to "punch in" on a second time clock. After and needed repairs or corrections have been made to the vehicle, plaintiffs are them permitted to continue with their assigned trip. However, in this situation they are paid only from the time they "punched in" at the second time clock. The intervening time period between the first and second time being on the average approximately 15 minutes. Plaintiffs, and others similarly situated, have repeatedly made demands upon defendant ABF for the approximate 15 minutes time in the service of ABF, and defendant ABF has willfully refused to pay any sums to plaintiffs for this period.

8. The foregoing actions by defendant ABF has continued throughout the length of aforementioned collective bargaining agreement. Plaintiffs and others similarly situated have repeatedly sought full and fair representation of their grievances as outlined above from and by Local 878, and have been denied such.

9. Until plaintiffs obtain discovery of defendant ABF's records, they are unable to state the exact amount owing to them, and to others similarly situated, by defendant ABF's refusal to pay at least a minimum wage for such time while in defendant's service. However, plaintiffs estimate, and therefore allege, the sums due them and others similarly situated, to be in excess of $20,000.00.

10. If the activities, or any portion thereof, for which plaintiffs seek to recover minimum wages herein, were

preliminary to the principal activities in which they were engaged, then, and in only such event, plaintiffs allege that such preliminary activities were compensable by a written contract in effect at the time of such activities between defendants ABF and Local 878, with the plaintiffs beneficiaries thereof. A copy of said written contract is attached hereto and identified as "Exhibit A", and is incorporated into these pleadings. The provision of said contract under which the activities were compensable are found in Article 50, Sections 1 and 2, on pages 140 and 141 of said exhibit. Plaintiffs further allege a custom and practice in effect during the stated period of time, in that ABF working under this same written contract at other terminals they operate did pay drivers for this time. In addition, competitors of ABF who are parties to the same contract with Local 878 customarily pay for the time in question. Inasmuch as the foregoing activities of plaintiffs were engaged in during the portion of the day to which they were so made compensable, then defendant is not relieved for liability for such activities under the provisions of 29 USC 254.

11. All plaintiffs herein, with the exception of Floyd Cockrum and A. H. Pickering, file herewith their written consent to the bringing of this cause of action. It is anticipated Cockrum and Pickering shall shortly do the same. Said written consent is attached to this pleading and marked "Exhibit B".

WHEREFORE, plaintiffs pray judgment against defendants ABF and Local 878 in the amounts respectively due plaintiffs and others similarly situated, for at least minimum wages, for liquidated damages and costs under the provisions of the Fair Labor Standards Act of 1938, as amended, and that this court also allow a reasonable at-

torney fee to be paid by defendants, and for any and all other proper relief.

COUNT TWO:

1. Plaintiffs bring action under this count in behalf of themselves and other employees and union members similarly situated, of defendant ABF and defendant Local 878, under 29 USC 185.

2. Jurisdiction of action under this count is conferred on this court by said 29 USC 185 and by 28 USC 1337.

3. Allegations of COUNT ONE, above, are incorporated herein by reference, and become allegations under this count.

4. Plaintiffs, and other employees of defendant ABF similarly situated, are members of Local 878, which maintains its' office in Little Rock, Arkansas. Odell Smith is president of said Local 878.

5. The collective bargaining agreement referred to in COUNT ONE, above, and attached hereto as "Exhibit A', provides for all employees to be paid from the time the employee is ordered to report for work and register in, and ceases at the time they are effectively released from duty. Also, as alleged in COUNT ONE, above, plaintiffs have been refused any pay whatsoever by defendant ABF for the time sought by plaintiffs, and such time has been spent in ABF's service after reporting for work and first registering in. ABF has repeatedly rejected demands of plaintiffs for pay for this time. Plaintiffs, and others similarly situated, have repeatedly sought aid and assistance from the defendant Local 878 for their grievances, and have been repeatedly rejected. Plaintiffs allege defendant Local 878 has breached its duty of full and fair representation to plaintiffs by its failure to process their grievances.

6. Plaintiffs have exhausted all other remedies in that defendant Local 878 has refused them full and fair representation with their grievances, and continued and further attempts to seek such would be futile.

7. Until plaintiffs obtain discovery of defendant ABF's records, they are unable to state the exact amount owing to them, and to others similarly situated, by reason of defendant ABF's failure to pay for time in its service, and for defendant Local 878's failure in its duty of full and fair representation. However, plaintiffs estimate, and therefore allege, the sums due them and others similarly situated, to be in excess of $200,000.00.

WHEREFORE, plaintiffs pray judgment against defendants ABF and Local 878, jointly and collectively, in the amount due them for breach of the collective bargaining agreement, and for failure to provide fair representation, for costs, and that this court also allow a reasonable attorney fee to be paid by defendants, and for any and all other proper relief."

2. Plaintiffs adopt foregoing complaint and exhibits thereto as part of this complaint, along with prayers for damages. Since date of said complaint Odell Smith is no longer president, and this complaint substitutes A. J. Pickering.

3. Actions enumerated in said complaint have continued since that date, and are continuing to date.

WHEREFORE, plaintiffs pray damages as set forth above, and any and all other relief.

JOSH E. McHUGHES &
J. H. COTTRELL
Attorneys for Plaintiffs
BY:J. H. Cottrell

[Jurat omitted in printing]

STATE OF ARKANSAS]
] ss. VERIFICATION
COUNTY OF PULASKI]

IN THE
United States District Court
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

[Caption omitted in printing]

ANSWER OF ARKANSAS-BEST FREIGHT SYSTEM, INC.

Comes the defendant, Arkansas-Best Freight System, Inc., and for its Answer states:

COUNT ONE:

I.

Admits the allegations contained in paragraph 1, except denies that the plaintiffs have any right or standing to bring this action on behalf of themselves or any other employees of this defendant.

II.

Denies that any jurisdiction is conferred on the Court by 29 U.S.C. 216(b). States that 29 U.S.C. 216(b) confers no substantive rights. Pleading further, this defendant, states that 28 U.S.C. § 1337 in and of itself confers no jurisdiction upon the Court, and that the plaintiffs' failure to allege the jurisdictional basis of the Court is fatally defective. Pleading further, that the plaintiffs have failed to comply with Rule 8(a) of the Federal Rules of Civil Procedure. That the defendant is unable to determine upon what jurisdictional basis the action is commenced and the Complaint of the plaintiffs should be dismissed for failure to so comply. Pleading further, this defendant states that the plaintiffs are improper parties and have no standing to commence the captioned action on account of their failure to comply with the requirements of 29 U.S.C. § 216(b) in that no plaintiff has filed a consent in writing to become a party to this action, as required by law.

III.

Admits the allegations of paragraph 3.

IV.

Admits the allegations of paragraph 4.

V.

Has no knowledge as to the allegations of paragraph 5 of the Complaint, and therefore denies same.

VI.

Admits the allegations of paragraph 6.

VII.

Admits the plaintiffs are notified of the time to report for work and register in at the Little Rock truck terminal. Admits the plaintiffs are required to "punch in" on a time clock upon arrival. Admits that plaintiffs must inspect the vehicles to which they are assigned after they arrive at the terminal. Admits, if the plaintiffs are satisfied of the good working order of the vehicle, they are then required to proceed on their assigned trip. Denies that the plaintiffs are are paid by the defendant from the time originally "punched in," and states affirmatively that the plaintiffs are paid by this defendant on a rate-per-mile and are not paid on a rate-per-hour basis. Admits, if the plaintiffs determine safety defects in their vehicles, they then transport same to the repair garage for corrections. Admits upon arrival at the repair garage plaintiffs are required to "punch in" on a second time clock. Admits after repairs have been made the plaintiffs required to continue with their assigned trip. States that the plaintiffs are required to "punch out" on the time clock at the repair garage upon the completion of necessary repairs before commencing their assigned trip. States that plaintiffs are paid at a minimum guaranteed hourly rate between the time they "punch in" at the repair garage and the time they "punch out" at the repair garage. Denies that the intervening time period from "punching in" at the terminal office to "punching in" at the repair shop constitutes approximately 15 minutes. Admits that some of the plaintiffs have made demand upon this defendant for payment of the time commencing when the plaintiffs punch into the terminal and time plaintiffs punch into the repair shop; denies that some of the plaintiffs have made such demands; denies that others similarly situated have made such demands. States that this defendant has consistently

refused to pay any sums to plaintiffs for the time involved, but denies that such refusal is willful, and states that such refusal is permitted and provided for pursuant to the collective bargaining agreement to which this defendant and the plaintiffs are parties. Denies all other allegations of paragraph 7.

VIII.

Admits this defendant has consistently followed the conduct set forth above. Denies that any of the plaintiffs, except Lloyd Barrentine and J. N. Scates, have sought any representation of their grievances from and by Local 878. Denies that any of the plaintiffs have been denied full and fair representation of their grievances concerning the foregoing allegations by Local 878. States that Local 878 has fully and fairly represented the plaintiffs in connection with the captioned matter at all times when demand for such representation has been made.

IX.

Denies the allegations of paragraph 9.

X.

Denies the allegations of paragraph 10. Pleading further, this defendant states that the plaintiffs have failed to attach a copy of the contract upon which the allegations of paragraph 10 are based to the copy of the Complaint served upon this defendant. That plaintiffs should be required to serve Exhibit A upon this defendant, or in the alternative, their Complaint should be dismissed.

XI.

Denies the allegations contained in paragraph 11 and states that Exhibit B has not been filed with the Court nor a copy of same served upon this defendant. That the failure to file said Exhibit B is fatal to the action of the plaintiffs, and same should be dismissed.

WHEREFORE, defendant prays that the Complaint of the plaintiffs be dismissed, and that they take nothing thereby.

COUNT TWO:

I.

Denies that the plaintiffs have standing to bring this action in behalf of themselves or other employees and union members similarly situated. Pleading further, this defendant states that the plaintiffs' allegations as to the identity of the alleged other union members is so vague as to be void, and said allegations should be stricken.

II.

Denies the allegations of paragraph 2.

III.

Denies the allegations of paragraph 3.

IV.

Denies the allegations of paragraph 4.

V.

States that the plaintiffs failed to attach "Exhibit A" to the Complaint, and that all allegations concerning Exhibit A should be stricken until such time as Exhibit A is attach-

ed or in the alternative the Complaint should be dismissed. Denies all other allegations contained in paragraph 5.

VI.

Admits that the plaintiffs Barrentine and Scates have exhausted all other remedies, as more fully set out hereinafter, but denies that any of the other plaintiffs have exhausted their other remedies, and states that as to such other plaintiffs this action is untimely and premature, as more fully set out hereinafter. Pleading further, this defendant denies that the plaintiffs have been refused fair and full representation and that further attempts to seek such would be futile.

VII.

Denies the allegations of paragraph 7.

WHEREFORE, this defendant prays that the Complaint of the plaintiffs be dismissed, and that they take nothing thereby.

Plaintiff admits the allegations of paragraph 1 of the Complaint filed March 23, 1977, but denies the allegations of paragraphs 2 and 3 of said Complaint.

DEFENSES

I.

29 U.S.C. §254, the Portal-To-Portal Pay Act provides that no employer shall be subject to any liability under the Fair Labor Standards Act of 1938, As Amended, the Walsh-Healey Act, or the Bacon-Davis Act on account of the failure of the employer to pay an employee a minimum wage or to pay an employee overtime compensation, for

any activities which are preliminary to the principal activity of the employee if same occurs on or after May 14, 1947. The principal activities of the plaintiffs consist of driving trucks loaded with freight in interstate commerce. The inspection of the vehicles driven by the plaintiffs are preliminary to such principal activities, and the plaintiffs' claims herein are barred on account thereof.

II.

At all times material herein, the plaintiffs were members of Teamsters Local Union #878, Little Rock, Arkansas; that Teamsters Local Union #878 for itself and for and on behalf of its members, including the plaintiffs, entered into the National Master Freight Agreement and the Southern Conference Area Over-The-Road Supplemental Agreement, herein referred to as the "Collective Bargaining Contract," to which the defendant was also a party. This Collective Bargaining Contract governs the rights and duties of the plaintiffs and the defendant hereunder. All of the plaintiffs have accepted, at all times material, the benefits provided by the Collective Bargaining Contract.

Article 44 of the Collective Bargaining Contract provides, and at all times material herein provided, that any controversy arising thereunder shall be resolved by and through the grievance procedure established therein. Said Article further provides that the decision rendered as a result of the grievance proceeding shall be final and binding on both parties.

III.

A. At the request of the plaintiff Barrentine, pursuant to Article 44 of the Collective Bargaining Contract, Local 878 filed formal grievance complaints for plaintiff Barren-

tine's benefit against the defendant Arkansas-Best Freight System, Inc. with the Southern Conference Grievance Committee upon the same facts as set forth in the Complaint; and hearings were had on such complaints as follows:

(i) Case #686
(a) Local 878 files formal complaint with Southern Conference Grievance Committee 12-22-69
(b) Hearing and Decision 1-26-70

(ii) Case #167
(a) Local 878 files formal complaint with Southern Conference Grievance Committee 1-8-70
(b) Hearing and Decision 5-11-70

(iii) Case #166
(a) Local 878 files formal complaint with Southern Conference Grievance Committee 1-22-70
(b) Hearing and Decision 5-11-70

(iv) Case #683
(a) Local 878 files formal complaint with Southern Conference Grievance Committee 1-22-70
(b) Hearing and Decision 5-11-70

(v) Case #392
(a) Local 878 files formal complaint with Southern Conference Grievance Committee 12-12-75
(b) Hearing and Decision 1-19-76

B. At the request of the plaintiff Scates, pursuant to Article 44 of the Collective Bargaining Contract, Local 878 filed a formal grievance complaint for Scates' benefit against the defendant Arkansas-Best Freight System, Inc. with the Southern Conference Grievance Committee upon the same facts as set forth in the Complaint; and a hearing was had on such complaint as follows:

(i) Case #549
(a) Local 878 files formal complaint with Southern Conference Grievance Committee 12-7-76
(b) Hearing and Decision 1-18-77

Each of the grievance committee decisions, as to Barrentine and Scates, held that the claims of each of such plaintiffs for additional compensation, as claimed in the plaintiffs' Complaint, was denied. In each instance, each plaintiff continued work pursuant to the terms of the Collective Bargaining Contract and this defendant complied with said final grievance decision in full.

IV.

Article 44 of the Collective Bargaining Contract further provides that there shall be no legal proceedings resorted to by either party without first using all possible means of settlement of disputes between the parties as provided in the Collective Bargaining Contract. The plaintiffs Edwards, Keeney, Blanton, Robinson, Deaton, Mittchell and Young are members of Local 878; have accepted the benefits of the Collective Bargaining Contract, and are subject to the burdens and limitations contained in said agreement. Such plaintiffs have failed and refused and continue to fail and refuse to abide by the terms, provisions and conditions of said agreement in that they have com-

menced this action without submitting their alleged grievances to the machinery provided for in the Collective Bargaining Contract. The said plaintiffs have failed to exhaust their remedies as provided and are barred from commencing or participating in this action.

V.

The plaintiffs, and each of them, are subject to the terms of the Collective Bargaining Contract; and the institution of this action by the plaintiffs constitutes a breach of said agreement. The plaintiffs come before the Court with unclean hands and by this action seek to do that which they by contract have agreed not to do. The plaintiffs' Complaint is without equity and should be dismissed on account thereof.

VI.

Pleading further, the defendant states that the plaintiffs' Complaint fails to state a claim upon which relief can be granted, and should therefore be dismissed.

VII.

Pleading further, the defendant states the plaintiffs' claims are each barred by the statute of limitations.

HARPER, YOUNG &
SMITH
P. O. Box 43
Fort Smith, AR 72902
By /s/ S. Walton Maurras
Attorneys for Defendant,
Arkansas-Best
Freight System, Inc.

DEFENDANT EXHIBIT LR-77-85

GRIEVANCE REPORT

CONTRACT AREA	EMPLOYEE CLASSIFICATION
☑ SOUTHERN CONFERENCE	☑ OVER-THE-ROAD
☐ CENTRAL STATES	☐ LOCAL CARTAGE
☐ EASTERN CONFERENCE	☐ GARAGE
☐ NATIONAL MASTER	☐ OFFICE
☐ FREIGHT AGREEMENT	☐

DEFENDANT'S EXHIBIT No. LR-C-77-85

L.B. Barretine	878	12-7-75
Grievant's Name	Local Union No.	Date of Violation

CLAIM: (attach copy of written complaint)
1/4 hr delay at L/Rock- From Clock Punch at disp. office to time clock punch at shop.

UNION'S POSITION: (use extra sheets if necessary)
See attached.

COMPANY'S POSITION: (describe facts in detail; attach all supporting documents)
Refer to bulletins dated 6-9-60, 7-13-62, attached
Previous cases denied on 1-26-70 and 5-11-70 see attached.

(Industrial Relations Departments Use Only)

Article No. 50 Type of Claim: Paid for time.
Committee Name: Southern multi
Hearing Date: 1-19-76
Case No. 342
Decision: Denied - cost to Union

Committee Members: Title, Alland, Pannel, Smith, Shelton, Hopkins

ABF No. 75-811 ABF Representative H. J. Johnson

COPY TO
COMPANY OFFICIAL:
Chairman, Opr. Comm. Jack Cheetz
Chairman, Union Comm. Howard Jones

Rd. Case X
City Case _____
Garage Case _____
Clerical Case _____
Dispatches _____

OFFICIAL GRIEVANCE REPORT
For Hearing By The
SOUTHWEST JOINT AREA COMMITTEE

878
J. B. Barrentine
Member

Arkansas Best Freight, Inc.
Little Rock, Arkansas
Address

Contract Violated: SW Area Over-the-Road
Article Violated: _____
State Briefly Nature of Complaint:
See Attached detailed (illegible)

This Claim is For: see attached
Date: 12/12/75 Agent's Signature_____(illegible)
Case No. _____ Date: _____
Disposition of Case: _____

MEMBER GRIEVANCE REPORT

Member's Name L. B. Barrentine Date 12-11-1975
Member's Address 7501 Redwood Dr. Little Rock
Phone 562-1091
Company Name: Arkansas Best Freight System, Inc.
Road:_X_City:____Garage:____Clerical:____
State Briefly Nature of Complaint: Claim for 1/4 hour delay time at L. R. on 12-7-75 that A.B.F. Driver Supervisor, N. A. Catter has notified me will not be paid. On 12-7 I clocked out at 5:23 AM. At the dispatch office then went out on the yard to my unit - 861-7992. The seat would not go back on 861 I could not even get in the tractor I walked to the shop and punched the shop clock at 5:31 a.m. The shop changed to 392 tractor and replaced a defective seal beam in 392 I clocked out on the shop clock at 5:51 a.m. I was on the clock working for A.B.F. from 5:23 a.m. until 5:51 a.m. a total of 28 minutes or 1/2 hr. I was only paid from the time I punched the clock inside the shop at 5:31 a.m. until 5:51 a.m. a total of 20 minutes or 1/4 hour. I am due an additional 1/4 hour for this delay time. Contract Article 50 specifies that our time will start from when we report to work and register in and that all time spent not driving shall be paid at the hourly rate. Federal Wage Laws also state that this is compensable time.
There is no way my mileage pay could start until after 5:51 a.m. Article 50 – also says we will be paid for all time spent in the service of the employer.
Note – If this grievance is denied I request a transcript of the hearing.
Member's Signature: L. B. Barrentine

CASE No. 392

878 – ABF – TIME CLAIM 1/4 HR 12/7/75 (L. B. Barrentine) Road

DECISION: Motion made and seconded, claim of the Union is denied.

UNION TO PAY FEE

RELEVANT PROVISIONS OF THE SOUTHERN AREA OVER-THE-ROAD SUPPLEMENT TO THE TEAMSTER MASTER FREIGHT AGREEMENT

ARTICLE 43.

Grievance Committees

Section 1.

The Employers and the Unions, parties to this Agreement shall together create and maintain permanent State or Multiple State Committees covering the States covered by this Agreement. The State of Multiple State Grievance Committees shall remain as now established unless changed by mutual agreement between the parties to this Agreement. It shall be the function of these Committees to adjust the disputes which cannot be settled between the Employer and the Local Union. The State or Multiple State Grievance Committees shall consist of an equal number of members appointed by Employers and Unions, but no less than three (3) from each group. Each group may appoint alternates to serve in the event of absence of permanent members. When a State or Multiple State Grievance meeting is called it shall be compulsory for each member of the Committee or the alternate to attend. Each State or Multiple State Grievance Committee shall meet within fifteen (15) days after either group Committee Chairman serves written notice on the other requesting a meeting and the place of the meeting and the exact date of same shall be mutually agreed upon. Each State or Multi-

ple State Grievance Committee shall at its first meeting formulate rules of procedure to govern the conduct of its proceedings. It is understood that any grievance of any employee working under this Agreement shall be processed by the appropriate State or Multiple State Grievance Committee.

If a dispute or grievance arising out of operations under this Agreement involves a Local Union situated in contiguous territory such dispute or grievance shall be referred to any of the State or Multiple State Grievance Committees for handling by the Chairman and Director of the Southern Conference of Teamsters, that he deems appropriate, and after such reference shall be handled under the usual procedure of that State or Multiple State Grievance Committee.

Area Committee
Section 2.

The Employers and the Unions, parties to this Agreement, shall together create a permanent Southern Conference Area Grievance Committee which shall consist of an equal number of representatives of the Employers and Unions from the Southern Conference Area. The Employers and the Unions each agree to notify the other in writing, giving the names of their respective Chairman within thirty (30) days after the signing of this Agreement. The respective Chairmen shall jointly decide the number of members comprising the Grievance Committee and shall furnish the names of their members in writing to the other. Thereafter any changes in representatives on the Southern Conference Area Grievance Committee will be by written notification to the other party's respective Chairman. The Southern Conference Area Grievance Committee shall meet within fifteen (15) days after either

group Committee Chairman has served written notice on the other, the exact date and place of meeting to be mutually agreeable. The Southern Conference Area Grievance Committee shall at its first meeting formulate rules of procedure to govern the conduct of its proceedings.

Function of Committees
Section 3.

It shall be the function of the various committees, above referred to, to settle disputes which cannot be settled between the Employer and the Local Union in accordance with the procedures established in Section 1, Article 44.

Subcommittees
Section 4.

All Committees established under this Article may act through subcommittees duly appointed by such Committees.

ARTICLE 44.
Grievance Machinery and Union Liability. Section 1

The Unions and the employers agree that there shall be no strikes, lockouts, tieups, or legal proceedings without first using all possible means of settlement as provided for in this Agreement and in the National Agreement, if applicable, of any controversy which might arise. Disputes shall first be taken up between the Employer and the Local Union involved. Failing adjustment by these parties, the following procedure shall then apply:

(a) Where a State or Multiple State Committee, by a majority vote, settles a dispute no appeal may be taken to the Southern Conference Area Grievance Commit-

tee. Such decision will be final and binding on both parties.

(b) Where a State or Multiple State Committee is unable to agree or come to a decision in the case, by majority vote, such case shall automatically be put on the Agenda of the next Southern Conference Area Grievance Committee meeting, by the Secretary of the State or Multiple State Grievance Committee, and must be decided by the Southern Conference Area Grievance Committee at the next Southern Conference Area Grievance Committee meeting. The decision of the Southern Conference Area Grievance Committee, by majority vote, shall be final and binding on both parties.

(c) Except as provided in Section 5 of this Article, deadlocked cases may be submitted to umpire handling if a majority of the Southern Conference Area Grievance Committee determines to submit such matter to an umpire for decision. Otherwise either party shall be permitted all legal or economic recourse.

(d) Failure of any Committee to meet without fault of the complaining side, refusal of either party to submit to or appear at the grievance procedure at any stage, or failure to comply with any Committee decision withdraws the benefits of this Article.

(e) The procedures set forth herein may be invoked only by the authorized Union representative or the Employer.

(f) The Employer shall be required to pay all monies due an employee as a result of a monetary grievance decision by the following second (2nd) regular pay period. Failure of the Employer to comply with this paragraph shall permit the Union to take strike action

and the Employer shall make whole all employees for all lost time as a result of said strike.

Section 2.

Notwithstanding anything herein contained, it is agreed that in the event any Employer is deliquent at the end of a period in the payment of his contribution to the Health and Welfare or Pension Fund or Funds, created under this Agreement, in accordance with the rules and regulations of the Trustees of such Funds, after the proper official of the Local Union has given seventy-two (72) hours notice to the Employer of such delinquency in Health and Welfare or Pension payments and/or failure to comply with Article 3, Section 3, of the National Agreement the employees or their representatives shall have the right to take such action as may be necessary until such delinquent payments are made, and it is further agreed that in the event such action is taken, the Employer shall be responsible to the employeers for losses resulting therefrom.

Section 3. Referral of Interpretation.

It is agreed that all matters pertaining to the interpretation of any provisions of this Agreement may be referred by either the Union Committee's Secretary or the Operator Committee's Secretary to the Southern Conference Area Grievance Committee at any time for final decision, and such Southern Conference Area Grievance Committee shall be convened on seventy-two (72) hours notice to handle matters so referred.

Section 4. Examination of Records

The Local Union, the State or Multiple State Committee or the Southern Conference Area Grievance Committee shall have the right to examine time sheets and any other records pertaining to the computation of compensation of any individuals whose pay is in dispute, or records pertaining to a specific grievance.

Section 5. National Grievance Committee

Grievances and questions of interpretation which are subject to handling under the provisions of Article 8 of the National Agreement shall be referred to the National Grievance Committee in accordance with such Article 8.

Section 6. Committee Expense

Any meeting room expense involved in such proceedings shall be shared equally between the parties to this Agreement.

ARTICLE 50.
Paid-For Time General
Section 1.

All employees covered by this Agreement shall be paid for all time spent in the service of the Employer. Rates of pay provided for by this Agreement shall be minimums. Time shall be computed from the time that the employee is ordered to report for work and registers in and until the time he is effectively released from duty. Such payment for employee's time when not driving shall be the hourly rate.

All time lost due to delays as a result of overloads or certificate violations involving federal, state or city regulations, which occur through no fault of the employee, shall be paid for by the Employer.

Section 2.
Call-In Time

Employees called to work shall be allowed sufficient time, without pay, to get to the garage or terminal, and shall draw full pay from the time ordered to report and registers in. All employees put to work shall be guaranteed a minimum of eight (8) hours pay at the current minimum

hourly rate. If not put to work, employee shall be guaranteed six (6) hour pay at the rate specified in this Agreement, and not be required to do any work not covered by this Agreement.

Section 3.
Layover

Where an employee is required to layover from his home terminal, layover pay shall commence following the fourteenth (14th) hour, he shall be guaranteed two (2) hours pay, in any event, for layover time. (Mechanical breakdown and equipment failure is not to be included in the two (2) hour guarantee, but employee will be paid for actual time delayed only in such event.) If he is held over more than two (2) hours, he shall receive layover pay for each hour held over up to eight (8) hours in the first twenty-two (22) hours of layover period, commencing after the run ends. This pay shall be in addition to the pay to which the employee is entitled if he is put to work at any time within the twenty-two (22) hours after the run ends. The same principle shall apply to each succeeding eighteen (18) hours, and layover pay shall commence after the tenth (10th) hour.

Meal Allowance

Employees shall receive a meal allowance of Four Dollars ($4.00) immediately after the seventeenth (17th) hour of the first layover period, and immediately after the tenth (10th) hour on subsequent layovers after the first period.

When on a compensable layover on Sundays and holidays there shall be a meal allowance of Four Dollars ($4.00); 5 hours thereafter, another meal allowance of

Four Dollars ($4.00); and 5 hours later a third meal allowance of Five Dollars ($5.00).

No more than 3 meals will be allowed during any 24-hour period.

An employee shall not be compelled to report to work at home terminal until he has had ten (10) hours off duty time. Whenever any Employer arbitrarily abuses the free time allowed in this section, then this shall be considered a dispute and the same shall be subject to being handled in accordance with the grievance procedure set forth in this Agreement.

Section 4.
Breakdown, Impassable Highways

On breakdown or impassable highways, employees on all runs shall be paid the minimum hourly rate for all time spent on such delays, commencing with the first (1st) hour or fraction thereof, but not to exceed more than eight (8) hours out of each twenty-four (24) hour period, except when an employee is required to remain with his equipment during such breakdown or impassable highway, he shall be paid for all such delay time at the rate specified in this agreement and such time required to be spent with the equipment shall not be included within the first eight (8) hours out of each twenty-four (24) hour period for which a driver is compensated on breakdowns or impassable highways, but must be paid for in addition. Where an employee is held longer than an eight (8) hour period, he shall in addition be furnished clean, comfortable sanitary lodging plus meals. The pay for delay time shall be in addition to monies earned for miles driven and/or work performed.

Section 5.
Deadheading

In all cases where an employee is instructed to ride or drive on Company or leased equipment he shall receive full pay as specified in this Agreement; when instructed to deadhead on other than Company or leased equipment, the employee shall likewise receive the full rate of pay as specified in this Agreement, plus the cost of transportation. A driver will not be required to deadhead from a terminal point on company equipment that does not have DOT approved seats and belts. When a driver deadheads by airplane he will be paid hours only subject to an eight (8) hour guarantee.

Section 6.
Bobtailing

Driving of tractor without trailer shall be paid on the same basis as tractor-trailer employees.

Section 7.
Protective Equipment

Terminal yardmen and hostlers shall be provided with rain gear. Any employee physically handling in substantial quantities hides, creosoted items, spun glass, lamp black, barbed wire, and acids shall be provided with rubber or leather aprons and gloves.

ARKANSAS – BEST FREIGHT SYSTEM, INC.
Little Rock, Arkansas

July 13, 1962

BULLETIN

TO: ALL ROAD DRIVERS

In the past we have issued instructions on how all delay time at Little Rock Shop would be handled. There are some of you who are not cooperating and it is necessary that we have full cooperation.

After you are dispatched by the Road dispatcher, you will punch the time clock in the Driver's room and after checking your equipment you find it necessary to have repairs made, you will notify the Shop Foreman and Road Dispatcher, punch in on the Maintenance clock and after repairs are made have your trip report signed and punch out on the Maintenance clock.

Any time claim that does not have all of this will be denied. By a copy of this letter to all parties concerned I am instructing them to follow through on this bulletin.

Very truly yours,
ARKANSAS-BEST FREIGHT
SYSTEM, INC.

/s N.A. Carter
N. A. Carter
Drivers Supervisor

NAC/vs

cc: W.G. Karsten
Harry Rink
Bob Floaks
H. F. Martin
Shop Foreman & Loadmen

c/Local 875

ARKANSAS-BEST FREIGHT SYSTEM, INC.
Little Rock, Arkansas

June 9, 1960

BULLETIN

TO: ALL LINE DRIVERS

Effective this date, all time claims for mechanical repairs will be handled in the following manner:

While checking your unit and you find some defect where it is necessary for you to have repairs made, it will be necessary for you to show your arrival and departure time by punching the clock at the shop. This is in addition to having the Shop foreman on duty sign your trip report. All time claims that have not been handled in this manner will be returned to the driver. Your cooperation will be appreciated.

Very truly yours,
ARKANSAS-BEST FREIGHT
SYSTEM, INC.

/s/ N.A. Carter
N. A. Carter
Drivers Supervisor

NAC/vs

cc: W.G. Karsten - Ft. Smith, Ark.
Local 878 - Little Rock Ark.
Ray Easton - Ft. Smith, Ark.
John H. Neal - Little Rock, Ark.
Harry Fink - Little Rock, Ark.
H. F. Martin - Little Rock, Ark.
Road Dispatcher - Little Rock, Ark.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

[Caption omitted in printing]

[Filed May 1, 1979]

ANSWERS TO INTERROGATORIES PROPOUNDED TO THE PLAINTIFF, CLEO KEENEY

INTERROGATORY NO. 8: State the gross income you received from ABF for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and 1978.

ANSWER: 1972 - $18,000; 1973 - $19,000; 1974 -$20,000; 1975 - $20,000; 1976 - $23,000; 1977 -$24,000; 1978 - $25,000 (approximately)

INTERROGATORY NO. 11: State the number of miles you drove each year for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and 1978, in performing your job for ABF.

ANSWER: 1972 - 85,000; 1973 - 85,000; 1974 - 85,000; 1975 - 90,000; 1976 - 100,000; 1977 -100,000; 1978 -100,000, (approximately).

INTERROGATORY NO. 12: State the number of hours you logged as being on duty, driving, by year, for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and 1978.

ANSWER: 50 to 60 hours, per week.

INTERROGATORY NO. 13: Identify each time since 1970 that you determined that defects existed in the working parts or accessories of your truck which resulted in

you transporting the vehicle to ABF's repair garage for needed corrections.

ANSWER: See attachment.

INTERROGATORY NO. 14: For each instance identified in the preceding Interrogatory, state the amount of time needed to make the required corrections to the vehicle.

ANSWER: Unknown, as no claim has been made for this time and the answer would be immaterial to the suit.

/s/ Cleo Keeney
CLEO KEENEY, PLAINTIFF

[Certificate of Service and Jurat omitted in printing]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

[Caption omitted in printing]

[Filed May 1, 1979]

ANSWERS TO INTERROGATORIES PROPOUNDED TO THE PLAINTIFF, LLOYD BARRENTINE

INTERROGATORY NO. 8: State the gross income you received from ABF for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and 1978.

ANSWER: 1972 - $20,700; 1973 - $17,600; 1974 -$24,000; 1975; $28,000; 1976 - $24,000; 1977 -$28,900; 1978 - $30,300, (approximately).

INTERROGATORY NO. 11; State the number of miles you drove each year for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and 1978, in performing your job for ABF.

ANSWER: 1972 -100,000; 1973 - 90,000; 1974 - 90,000; 1975 - 110,000; 1976 - 115,000; 1977 -115,000; 1978 -115,000, (approximately).

INTERROGATORY NO. 12: State the number of hours you logged as being on duty, driving, by year, for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and 1978.

ANSWER: 55 to 60 hours, per week.

INTERROGATORY NO. 13: Identify each time since 1970 that you determined that defects existed in the working parts or accessories of your truck which resulted in you transporting the vehicle to ABF's repair garage for needed corrections.

ANSWER: See attachment.

INTERROGATORY NO. 14: For each instance identified in the preceding Interrogatory, state the amount of time needed to make the required corrections to the vehicle.

ANSWER: Unknown, as no claim has been made for this time and the answer would be immaterial to the suit.

/s/ Lloyd Barrentine
LLOYD BARRENTINE,
PLAINTIFF

[Certificate of Service and Jurat omitted in printing]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

[Caption omitted in printing]

[Filed May 1, 1979]

ANSWERS TO INTERROGATORIES PROPOUNDED TO THE PLAINTIFF, CHARLEY DEATON

INTERROGATORY NO. 8: State the gross income you received from ABF for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, and 1978.

ANSWER: 1972 - $16,000; 1973 - $18,000; 1974 -$20,000; 1975 - $22,000; 1976 - $24,000; 1977 -$26,000; 1978 - $29,000, (approximately).

INTERROGATORY NO. 11: State the number of miles you drove each year for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, and 1978, in performing your job for ABF.

ANSWER: From 1972 through 1978 approximately 100,000 per year.

INTERROGATORY NO. 12: State the number of hours you logged as being on duty, driving, by year for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and 1978.

ANSWER: 50 to 60 hours per week.

INTERROGATORY NO. 13: Identify each time since 1970 that you determined that defects existed in the working parts or accessories of your truck which resulted in you transporting the vehicle to ABF's repair garage for needed corrections.

ANSWER: Approximately three (3) times per month.

INTERROGATORY NO. 14: For each instance identified in the preceding Interrogatory, state the amount of time needed to make the required corrections to the vehicle.

ANSWER: Unknown, as no claim has been made for this time and the answer would be immaterial to the suit.

/s/ Charley W. Deaton
CHARLEY W. DEATON,
PLAINTIFF

[Certificate of Service and Jurat omitted in printing]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

[Caption omitted in printing]

[Filed May 1, 1979]

ANSWERS TO INTERROGATORIES PROPOUNDED TO THE PLAINTIFF, MAXIE BLANTON

INTERROGATORY NO. 8: State the gross income you received from ABF for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and 1978.

ANSWER: 1972 - $17,000; 1973 - $18,000; 1974 -$19,000; 1975 - $21,000; 1976 - $23,000; 1977 - $24,000; 1978 - $28,000, (approximately).

INTERROGATORY NO. 11: State the number of miles you drove each year for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and 1978, in performing your job for ABF.

ANSWER: 1972 - 85,000; 1973 - 85,000; 1974 - 85,000; 1975 - 90,000; 1976 - 100,000; 1977 - 100,000; 1978 -100,000, (approximately).

INTERROGATORY NO. 12: State the number of hours you logged as being on duty, driving, by year, for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and 1978.

ANSWER: 50 to 60 hours per week.

INTERROGATORY NO. 13: Identify each time since 1970 that you determined that defects existed in the working parts or accessories of your truck which resulted in you transporting the vehicle to ABF's repair garage for needed corrections.

ANSWER: See attachment.

INTERROGATORY NO. 14: For each instance identified in the preceding Interrogatory, state the amount of time needed to make the required corrections to the vehicle.

ANSWER: Unknown, as no claim has been made for this time and the answer would be immaterial to the suit.

/s/ Maxie Blanton
MAXIE BLANTON,
PLAINTIFF

[Certificate of Serviced and Jurat omitted in printing]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

[Caption omitted in printing]

[Filed May 1, 1979]

ANSWERS TO INTERROGATORIES PROPOUNDED TO THE PLAINTIFF, H. F. MITTCHELL

INTERROGATORY NO. 8: State the gross income you received from ABF for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and 1978.

ANSWER: 1972 - $18,000; 1973 - $19,000; 1974 -$20,000; 1975 - $23,000; 1976 - $25,000; 1977 - $28,000; 1978 - $31,000, (approximately).

INTERROGATORY NO. 11: State the number of miles you drove each year for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, and 1978, in performing your job for ABF.

ANSWER: 1971 - 85,000; 1973 - 90,000; 1974 - 100,000; 1975 - 100,000; 1976 - 114,000; 1977 - 116,000; 1978 -118,000, (approximately).

INTERROGATORY NO. 12: State the number of hours you logged as being on duty, driving, by year, for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and 1978.

ANSWER: 55 to 60 hours, per week.

INTERROGATORY NO. 13: Identify each time since 1970 that you determined that defects existed in the working parts or accessories of your truck which resulted in you transporting the vehicle to ABF's repair garage for needed corrections.

ANSWER: Approximately 3 to 4 times per month.

INTERROGATORY NO. 14: For each instance identified in the preceding Interrogatory, state the amount of time needed to make the required corrections to the vehicle.

ANSWER: Unknown, as no claim has been made for this time and the answer would be immaterial to the suit.

/s/ H.E. Mittchell
H.E. MITTCHELL,
PLAINTIFF

[Certificate of Service and Jurat omitted in printing]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

[Caption omitted in printing]

[Filed May 1, 1979]

ANSWERS TO INTERROGATORIES PROPOUNDED TO THE PLAINTIFF, J.N. SCATES

INTERROGATORY NO. 8: State the gross income you received from ABF for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and 1978.

ANSWER: 1972 - $17,000; 1973 - $18,000; 1974 -$19,000; 1975 - $21,000; 1976 - $23,000; 1977 - $24,000; 1978 - $28,000, (approximately).

INTERROGATORY NO. 11: State the number of miles you drove each year for the years 1970, 1971, 1972, 1973,

1974, 1975, 1976, 1977 and 1978, in performing your job for ABF.

ANSWER: 1972 - 85,000; 1973 - 85,000; 1974 - 85,000; 1975 - 90,000; 1976 - 100,000; 1977 - 100,000; 1978 -100,000, (approximately)

INTERROGATORY NO. 12: State the number of hours you logged as being on duty, driving, by year, for the years 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and 1978.

ANSWER: 60 to 70 hours, per week.

INTERROGATORY NO. 13: Identify each time since 1970 that you determined that defects existed in the working parts or accessories of your truck which resulted in you transporting the vehicle to ABF's repair garage for needed corrections.

ANSWER: See attachment.

INTERROGATORY NO. 14: For each instance identified in the preceding Interrogatory, state the amount of time needed to make the required corrections to the vehicle.

ANSWER: Unknown, as no claim has been made for this time and the answer would be immaterial to the suit.

/s/ J.N. Scates
J.N. SCATES
PLAINTIFF

[Certificate of Service and Jurat omitted in printing]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

[Caption omitted in printing]

[Filed April 26, 1979]

PRE-TRIAL STIPULATION

Come now, Lloyd Barrentine, Clyde G. Edwards, Cleo Keeney, Maxie Blanton, Johnny Robinson, J. N. Scates, Charley Deaton, H.E. Mittchell and L. R. Young, plaintiffs, Arkansas-Best Freight Systems, Inc., Chauffeurs, Teamsters and Helpers Local Union No. 878 and A. H. Pickering, defendants, and through their respective counsel of record and pursuant to Local Rule 9 of this Court do hereby stipulate as follows:

I.

STATEMENT OF THE CASE

This is an action brought by over the road drivers employed by defendant Arkansas Best Freight, hereinafter referred to as A.B.F. Chauffeurs, Teamsters and Helpers Local Union No. 878, hereinafter referred to as Teamsters 878, is the collective bargaining representative of plaintiffs. A.B.F. and Teamsters 878 are parties to the National Master Freight and Southern Conference Area Over-the-Road Supplemental Agreement which prescribes the wages and other terms and conditions of employment of over the road drivers employed by A.B.F. A true copy of the agreement is attached as Exhibit-A to the stipulation. Plaintiffs seek to invoke the jurisdiction of the court pursuant to 29 U.S.C. §216(b), 28 U.S.C. §1337 and 29 U.S.C. §185.

Plaintiffs allege that they bring this action on behalf of themselves and other employees of A.B.F. and members of Local 878 who are similarly situated.

Plaintiffs also allege that in the course of their employment with A.B.F., they are required to report for work at A.B.F.'s Little Rock, Arkansas truck terminal. Upon arrival, plaintiffs "punch in" on a time clock, receive their dispatch papers and fill out their daily log books. After completing their paperwork, plaintiffs locate their tractor-trailer units and then make a pretrip inspection of the unit as required by Sections 392.7 and 392.8 of the Federal Motor Carrier Safety Regulations, 49 C.F.R. 392.7 and 392.8 (1977), to determine if the tractor-trailer unit is in proper working order. If the vehicle is in proper working order, plaintiffs proceed on their assigned trip. However, if there are defects in the vehicle, plaintiffs are required to report to A.B.F.'s repair garage which is located on the same premises. Upon arriving at the garage, plaintiffs are again required to punch in on a second time clock. After repairs are completed on the vehicle, plaintiffs punch out on the second time clock and proceed on their assigned trip. At all times material to this complaint, plaintiffs have been paid for the period of time they spend in the garage waiting for the vehicle to be repaired, however, they are not paid for the lapse of time between punching in on the first time clock and punching in on the second time clock while the driver is making the pretrip inspection and transporting the vehicle to the garage.

Plaintiffs allege that A.B.F.'s failure to pay them for the lapse of time spent making the pretrip inspection and transporting the vehicle to the garage violates 29 U.S.C. §216(b). Additionally, plaintiffs allege that A.B.F. is violating article 50 of the Southern Conference Area Over-

the-Road Supplemental Agreement by not paying for the above described period of time. Article 50, section 1 of the agreement provides in pertinent part:

> All employees covered by this Agreement shall be paid for all time spent in the service of the Employer. Rates of pay provided for by this Agreement shall be minimums. Time shall be computed from the time that the employee is ordered to report for work and registers in and until the time he is effectively released from duty. Such payment for employee's time when not driving shall be the hourly rate.
>
> . . . .

Articles 43 and 44 of the agreement also prescribes grievance procedures under which to test alleged violations of the contract. Pursuant to the grievance procedure, plaintiffs Barrentine and Scates filed one or more grievances with Teamsters 878 concerning the same allegations as set forth in their complaint. Each grievance was duly processed and a hearing was held on each grievance by the Southern Multi-State Grievance Committee. Each grievance was denied. Plaintiffs Deaton, Mittchell, Keeney, Blanton, Edwards, Robinson and Young did not file grievances with Teamsters 878 based on the allegations set forth in the complaint. Plaintiffs contend also that they and others similarly situated have repeatedly sought, but have been denied full and fair representation of their grievances from Local 878. Defendants A.B.F. and Teamsters 878 deny that either 29 U.S.C. §216(b) or 29 U.S.C. §185 has been violated.

II.

UNDISPUTED FACTS

The following facts have been admitted by the parties:

A. Plaintiffs are over-the-road drivers of A.B.F. and are members of Teamsters 878. The primary job duty of each plaintiff consists of driving trucks loaded with freight in interstate commerce.

B. A.B.F. is a corporation organized under the laws of the State of Arkansas with its principal place of business in Fort Smith, Arkansas and it also operates a freight terminal in Pulaski County, Arkansas. At all times material to this complaint, A.B.F. has been engaged in the business of hauling freight across state lines throughout the United States and is thus engaged in interstate commerce.

C. Teamsters Local 878 is the collective bargaining agent of plaintiffs and other A.B.F. over-the-road drivers who are domiciled in Little Rock, Arkansas and as such owed them a duty of fair representation.

D. At all times pertinent to the allegations of the complaint, defendant A.B.F. and Teamsters 878 have been parties to the National Master Freight and Southern Conference Area Over-the-Road Supplemental Agreement which governs the wages, hours, and working conditions of the over-the-road drivers of A.B.F. A true copy of this agreement is attached as Exhibit A to the stipulation and incorporated by reference herein. Exhibit A is negotiated by the Teamsters National Freight Industry Negotiating Committee representing Local Unions affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and an Employer Association representing A.B.F.

E. Attached as Exhibit B to the stipulation are a true and correct copy of Parts 390-397 of the Federal Motor Carrier Safety Regulations duly promulgated by the U.S. Department of Transportation Federal Highway Administration. 49 C.F.R.Parts 390-397 (1977).

F. Plaintiffs and other over-the-road drivers of A.B.F. are required by 49 C.F.R. §§392.7, 392.88, 393.95 and 393.96 to make a pretrip inspection of his trailor-trailer unit to determine whether certain parts and accessories are in good working order and that certain emergency equipment is in place and ready to use.

G. Plaintiffs and other over-the-road drivers employed by A.B.F. are required to punch in at the Little Rock, Arkansas terminal when they arrive. If it is necessary for plaintiffs and other drivers to report to the repair shop, they are also required to punch in on a second time clock when they arrive at the repair shop. Plaintiffs and other drivers are not paid for the interval of time between punching in on the time clock at the terminal and punching in on the time clock in the repair shop. Plaintiffs and other drivers are paid for the period of time spent in the shop waiting for their vehicle to be repaired.

H. One or more grievances were filed by plaintiffs Barrentine and Scates based on the same facts as those alleged in their complaint.

I. A hearing was held on each grievance by the Southern Multistate Grievance Committee in Biloxi, Mississippi pursuant to Article 44 of the collective bargaining agreement. Plaintiffs Barrentine and Scates did not attend any of the grievance hearings. Each grievance was denied by the committee.

J. The Southern Multistate Grievance Committee is composed of six persons – three representing the employers and three representing the union. When a grievance is heard involving defendants A.B.F. and Teamsters 878, no representative of either A.B.F. or Teamsters 878 is allowed to sit on the panel rendering the decision. A majority decision of the Southern Multistate Grievance Committee is final and binding upon the parties to the collective bargaining agreement.

K. Plaintiffs Edwards, Blanton, Deaton, Robinson, Mittchell, Young, and Keeney did not file grievances with Teamsters Local 878 based on the allegations set forth in the complaint.

III.

UNCONTESTED ALLEGED FACTS

There are no alleged facts which any party is unable to concede but does not intend to contest at the trial by evidence to the contrary.

IV.

OBJECTIONS TO ADMISSIBILITY

There are no objections, qualifications or reservations by any party to the admissibility of any facts or matters covered by this stipulation.

V.

ISSUES OF FACT AND LAW

The mixed issues of fact and law to be resolved are as follows:

A. Does 29 U.S.C. §216(b) confer jurisdiction upon the Court or confer any substantive rights?

B. Did plaintiffs comply with the requirements of 29 U.S.C. §216(b) by filing a consent in writing to become a party to this action, as required by law? If plaintiffs failed to file their written consent, does the court have jurisdiction of the claim under 29 U.S.C. §216(b)?

C. Can plaintiffs proceed as representatives of a class pursuant to Fed. R. Civ. P. 23?

D. Is the Portal-to-Portal Pay Act, 29 U.S.C. § 254, applicable to the allegations raised in the complaint?

E. Are the terms of the bargaining agreement binding upon the plaintiffs and are they estopped from proceeding under 29 U.S.C. § 185?

F. Have the defendants breached their duty of fair representation owed to the plaintiffs?

G. Would it have been futile for all plaintiffs to attempt to resolve their complaints through the grievance procedure of the collective bargaining agreement?

H. Has defendant A.B.F. breached the collective bargaining agreement by not paying drivers for the time required to inspect their vehicle and transport it to the repair garage?

VI.

RELIEF SOUGHT

Plaintiffs seek judgment against defendants for minimum wages, for liquidated damages and for costs under the provisions of the Fair Labor Standards Act, 29 U.S.C. 216(b), and reasonable attorney's fees. Additional-

ly, plaintiffs seek a judgment under 29 U.S.C. § 185 for all amounts due them including costs and reasonable attorney's fees.

Defendant Teamsters 878 and A.B.F. asks that the complaint be dismissed with prejudice in its entirety and for reasonable attorney's fees.

VII.

SCHEDULE OF EXHIBITS

A. **Plaintiffs' Exhibits** (To be provided by plaintiffs)

B. **A.B.F.'s Exhibits**

1. **National Master Freight Agreement and Southern Conference Area Over-the-Road Supplemental Agreement**
   (a) April 1, 1976 to March 31, 1979
   (b) July 1, 1973 to March 31, 1976

* * *

[Subscription omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

[Caption omitted in printing]

[Filed May 7, 1979]

JUDGMENT

This cause having come for trial before the Court on May 2, 3, and 4, 1979; all parties having rested; and the Court having delivered an opinion at the conclusion of the trial, which opinion constitutes the findings of fact and conclusions of law of the Court under Fed. R. Civ. P. 52,

It is by the Court this 4th day of May, 1979, CONSIDERED, ORDERED, ADJUDGED, and DECREED that the complaints be, and they are hereby, dismissed with prejudice.

/s/ Richard S. Arnold,
United States District Judge.